

**FILED**

**SEP 11 2017**

Clerk, U.S. District Court  
District Of Montana  
Helena

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

WEH Magic Valley Holdings, LLC, a  
limited liability corporation,

Plaintiff,

vs.

EIH Parent, LLC, a limited liability  
company and James Carkulis, an  
individual,

Defendants.

No. CV-15-50-H-SEH

**ORDER**

Defendants EIH and James Carkulis' Motion to Dismiss Counts I (in Part), and II through V of Plaintiff's Second Amended Complaint and to Dismiss James Carkulis<sup>1</sup> filed on November 4, 2016, remained pending when renewed cross-motions directed to Counts II-V were filed on July 14, 2017.<sup>2</sup> The July 14, 2017, cross-motions were denied, for reasons stated by Order and Memorandum of September 5, 2017.<sup>3</sup>

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<sup>1</sup> Doc. No. 89.

<sup>2</sup> Doc. Nos. 142 and 146.

<sup>3</sup> Doc. No. 160.

Issues raised by Defendants' Motion to Dismiss Counts II through V of Plaintiff's Second Amended Complaint<sup>4</sup> asserted on November 4, 2016, and renewed on July 14, 2017,<sup>5</sup> appear to have been embraced by and within the issues pending when the September 5, 2017, Order and Memorandum were issued.<sup>6</sup> In the interest of clarification of the record for purposes of consideration for remaining issues,

ORDERED

Defendants EIH and James Carkulis' motion<sup>7</sup> to dismiss counts II through V of Plaintiff's Second Amended Complaint<sup>8</sup> are denied without prejudice, as limited by the terms of this order.

If, and to the extent, either party now contends that issues directed to Counts II through V of the Second Amended Complaint which were raised in Defendants' motion to dismiss counts II through V of the Second Amended Complaint dated November 4, 2016, remain pending and unresolved, such party shall have to and including September 15, 2017, in which to file an additional brief directed solely

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<sup>4</sup> Doc. No. 89.

<sup>5</sup> Doc. Nos. 142 and 146.

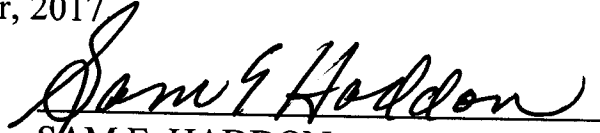
<sup>6</sup> Doc. No. 160.

<sup>7</sup> Doc. No. 89.

<sup>8</sup> Doc. No. 82.

to such unresolved issues. Optional response briefs shall be filed on or before  
September 22, 2017.

DATED this 11<sup>th</sup> day of September, 2017

A handwritten signature in cursive script, reading "Sam E. Haddon", written over a horizontal line.

SAM E. HADDON

United States District Judge